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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CISCO SYSTEMS, INC.,

Plaintiff,

vs.

ARISTA NETWORKS, INC.,

Defendant.

CASE NO. 5:14-cv-5344-BLF (NC)

**BRIEF RE: OPINION OF DR.
ALMEROTH ON PARSER SOURCE
CODE AS REQUESTED BY THE COURT**

Judge: Hon. Beth Labson Freeman

1 Pursuant to the Court’s instructions following the *Daubert* hearing, Cisco provides the
2 following submission relating to Dr. Kevin Almeroth’s expert opinions on the similarities in the
3 CLI parser source code between Cisco and Arista products. Dr. Almeroth had previously
4 provided his expert opinions for the ‘526 patent in the context of the claim construction
5 proceedings. (Dkt. 91-1).

6 In the Second Amended Complaint, Cisco set forth its allegations that Arista willfully
7 infringed Cisco’s ‘526 patent. As part of these allegations, Cisco specifically alleged that “[o]n
8 information and belief, Mr. Duda and/or other Arista engineers who had worked previously for
9 Cisco were ***exposed to highly confidential source code*** and product implementation details for a
10 wide variety of Cisco’s proprietary products and technologies, *e.g.*, ***Cisco’s CLI parser***,
11 centralized database system (“sysDB”), management applications, and software development tools
12 and interfaces.” (Dkt. 64, Second Amended Complaint, ¶ 61).

13 Under Federal Circuit precedent, evidence of product copying is relevant to the
14 determination of willful infringement. *Liquid Dynamics Corp. v. Vaughan Co.*, 449 F.3d 1209,
15 1225 (Fed. Cir. 2006). Accordingly, in support of Cisco’s willfulness allegations for the ‘526
16 patent, Dr. Kevin Almeroth provided his expert analysis and opinions regarding non-standard
17 similarities in the CLI parser source code for both Cisco and Arista products, including similarities
18 in the application of parser rules and the processing of command tokens. (Dkt. 419-10 at ¶¶ 83-
19 86). At his deposition, he was asked to explain his opinions on those topics, and he responded by
20 providing further details on his reasoning and bases for his opinions. (Dkt. 419-12 at 274:1-
21 293:14).

22 Thus, under Federal Rule of Civil Procedure 26, Cisco has properly preserved the issue of
23 non-standard similarities in the CLI parser code with respect to the ‘526 patent. At the *Daubert*
24 hearing, however, the Court observed that the issue of “non-standard” behavior associated with
25 Dr. Almeroth’s opinions is “not unlike the problem identified with Dr. Black” and “so you know I
26 need to be consistent here.” (Dkt. 516. 9/9/16 Hearing Tr. at 51:10-12). In light of the Court’s
27 comments, and in order to streamline the issues for the Court, Cisco hereby stipulates that it will
28 not present at trial Dr. Almeroth’s opinions relating to the non-standard similarities in the CLI

1 parser source code between Cisco and Arista products (setting aside his opinions on the screen
2 output and helpdesc similarities) for any purpose. Cisco maintains its *Daubert* objections to the *de*
3 *facto* industry standard opinions from Arista's experts, including Dr. Black.

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6 Dated: September 16, 2016

Respectfully submitted,

7 /s/ John M. Neukom

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